

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

CHERYL ALICE HAM,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-15-023-RAW-KEW
)	
CAROLYN W. COLVIN,)	
Acting Commissioner of Social Security)	
Administration,)	
)	
Defendant.)	

ORDER REMANDING CASE FOR FURTHER PROCEEDINGS

On March 8, 2016, Magistrate Judge West entered a Report and Recommendation in the above-referenced case, recommending that this court reverse the Commissioner’s decision upholding on appeal the findings of the Administrative Law Judge (“ALJ”), denying benefits to plaintiff. Defendant has filed an objection to the Report and Recommendation, which the court has considered.

Claimant has several “severe impairments” at step two of the evaluation process,^{*} and the ALJ found that claimant’s fibromyalgia was one of those. The Magistrate Judge, however, found that the ALJ should have addressed fibromyalgia as a separate condition at step five in evaluating claimant’s functional limitations. Defendant argues this is unnecessary. Fibromyalgia is something of a “wild card” in these cases. For one thing, it is not diagnosed through objective findings. *See Gilbert v. Astrue*, 231 Fed.Appx. 778, 782-85


^{*}See Report and Recommendation (#14) at 2 & n.1.

(10th Cir.2007). It therefore “presents a conundrum for insurers and courts evaluating disability claims.” *Welch v. UNUM Life Ins. Co. of Am.*, 382 F.3d 1078, 1087 (10th Cir.2004). This court will affirm the Magistrate Judge’s resolution. *See also Boston v. Astrue*, 2011 WL 4914759 at *9 (S.D.Ohio 2011)(“[I]t was erroneous for the ALJ to determine fibromyalgia is a severe impairment which significantly limits Plaintiff’s ability to perform basic work activities and then fail to evaluate or consider any functional limitations associated with fibromyalgia.”).

Upon full consideration of the entire record and the issues herein, this court finds that the Magistrate Judge’s findings are supported by substantial evidence and the prevailing legal authority. Accordingly, the Report and Recommendation of the United States Magistrate Judge is hereby AFFIRMED and ADOPTED as this court’s Findings and Order. The decision of the Secretary is reversed and this case is remanded to Defendant pursuant to the fourth sentence of 42 U.S.C. §405(g) for further administrative proceedings.

ORDERED THIS 30th DAY OF MARCH, 2016.

Dated this 30th day of March, 2016.


Ronald A. White
United States District Judge
Eastern District of Oklahoma